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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET NO. 93-87
	)	
RAYMOND W. CLANTON	)	File No. BPH-911216MC
	)	
LOREN F. SELZNICK	)	File No. BPH-911216MD
	)	
	)	
For Construction Permit for a	)	
New FM Station on channel 279A	)	
in El Rio, California	)	

To: Honorable John M. Frysiak  
Administrative Law Judge

SECOND MOTION TO ENLARGE ISSUES

Loren F. Selznick respectfully moves to enlarge issues<sup>1</sup> against Raymond W. Clanton ("Clanton") concerning both his financial qualifications and his misrepresentation.<sup>2</sup>

Background

1. In his September 7, 1993 Petition for Leave to Amend, Clanton seeks to modify the basis for his financial

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<sup>1</sup> The motion is based upon newly discovered evidence contained in the Petition for Leave to Amend, filed by Clanton on September 7, 1993 ("Petition for Leave to Amend") and received by Selznick's counsel via mail on September 8, 1993. As this motion is filed within 15 days of the discovery of such newly discovered evidence, it is timely. In any event, the motion addresses matters of decisional significance and should be considered. See 47 CFR § 1.229(c).

<sup>2</sup> The discovery that is requested to be authorized under the added issues is provided in Appendix A.

qualifications, allegedly to "correct his inadvertent omission"<sup>3</sup> in Clanton's original financial plan. His attempt to amend his financial plan to report a new source of funding, however, demonstrates that the financial certification in Clanton's December 16, 1991 application was false.

2. Clanton claimed in his December 1991 application that \$204,155 would be necessary to construct an FM station in El Rio, California and operate it without revenue for three months. He stated the funds would be supplied entirely by himself and that he had \$450,000 in liquid assets available for the project. On May 4, 1992, Clanton amended his application "to show that the amount of funds to be supplied by the applicant for the construction operation [of] his requested facilities is \$275,000."<sup>4</sup> At that time, there was no reason for Selznick to oppose the amendment, since the funds to be supplied by Clanton still exceeded his \$204,155 cost estimate.

3. In his recent Petition for Leave to Amend, Clanton now states that \$86,000 of the funds upon which he relied in his initial application and the May 1992 amendment are not his. "[C]ertain funds for his station could be coming from a mutual fund registered in his wife's name, separate from his own."<sup>5</sup> The

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<sup>3</sup> Petition for Leave to Amend at 1.

<sup>4</sup> Amendment, signed by Clanton on May 1, 1992 and filed on May 4, 1992.

<sup>5</sup> Petition for Leave to Amend at 1. In his Amendment, Clanton states that "up to \$86,000 of the funds needed... may come from my wife..." See Amendment, dated September 1, 1993. (continued)

mutual fund did not belong to Clanton in December 1991 or May 1992 and he "neglected to list his wife [in the 1991 application] ... as a source of funds." See Petition at 1. When his wife's \$86,000 is subtracted from the \$275,000 Clanton stated he could supply for the station, there remains only \$189,000 -- not enough to cover his current \$204,155 cost estimate.

#### DISCUSSION

4. The Commission requires every applicant to list all of its funding sources in Section III of the Form 301 application. Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301), 4 FCC Rcd 3853 (1989). The Commission reasons that this policy of "naming sources" may deter the filing by financially unqualified applicants who may be seeking merely to enter into a settlement.<sup>6</sup>

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Use of the words "may come" and "could be coming" raise separate problems. Does Clanton rely on these funds or not? Since the Amendment would appear to be an irrelevancy if Clanton does not rely on his wife's funds, why does Clanton use such ambiguous language? In any event, Clanton's own fuzziness leaves his financial plan in doubt. Does it include his wife's funds or not? Why is he being obtuse? These uncertainties and inconsistencies about his financial plan form an independent bases for the addition of financial issue. See Sunbelt Limited Partnership, 7 FCC Rcd 4394, 4395 ¶¶ 7-10 (Rev. Bd. 1992), aff'd 8 FCC Rcd 753 (1993) (inconsistencies about applicant's financial plan warranted hearing and, ultimately, disqualification).

<sup>6</sup> Prior to the FCC's revision of its settlement rules, Clanton applied for a construction permit for a new FM station in Oxnard, California. In his application, dated May 3, 1988, Clanton checked "No" next to the statement: "The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to  
(continued)

5. In his December 16, 1991 application, Clanton failed to list his wife as a source for approximately one-third of his needed funds. He now seeks to change his financial plan to list his wife as a source of funds.

6. Clanton claims that he currently has written assurance from his wife that her \$86,000 will be available for his El Rio radio project. However, Clanton also claims that, at the time he filed his 1991 application, "he considered the mutual fund to be his own."<sup>7</sup> The written assurance from his wife is contained in a document dated December 10, 1991, just a few days before he executed his December 1991 application in which he made no reference to his wife's ownership of the fund or her consent to his use of her funds. It is simply untenable for Clanton to claim that he obtained written consent from his wife for her funds on December 10, 1991 and -- only days later -- ignored those crucial facts completely. Cf. Sarasota-Charlotte Broadcasting Corporation v. FCC, 976 F.2d 1439, 1441 (D.C. Cir. 1992) (comparative FM case remanded where FCC relied on "untenable" facts).

7. Moreover, the "assurance" from his wife, whenever she gave it to him, is inadequate. Mrs. Clanton agrees merely to

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construct and operate the requested facilities for three months without revenue." He added the text: "Will certify when financial plan is in place." On April 15, 1991, Clanton signed a settlement agreement in the Oxnard proceeding entitling him to payments totaling \$150,000 plus a right of first refusal extinguishable by the other party at will for a further payment of \$25,000. See M.M. Docket No. 90-416.

<sup>7</sup> Petition for Leave to Amend at 1.

"liquidate all, or such portion as may be required, of my Franklin U.S. Government Securities Mutual Fund and make the resulting proceeds available for you to use for the radio station." See December 10, 1991 letter signed by Peggy J. Clanton. It is unclear whether "mak [ing] the resulting proceeds available for [Clanton] to use for the radio station" would constitute a loan, an equity investment or an outright gift. Both Mrs. Clanton's letter and Mr. Clanton's Amendment are fatally silent. In sum, there are substantial questions about material facts concerning Clanton's initial financial certification that warrant an evidentiary hearing. See Weyburn Broadcasting L.P.v. FCC, 984 F.2d 1220 (D.C. Cir. 1993) (Court remands FM case for hearing on substantial questions regarding applicant's financial qualifications).

8. In addition to the issue of Clanton's 1991 false financial certification, there is also a need for a misrepresentation issue. Clanton does not explain how he could possibly have "considered... to be his own" a mutual fund registered solely in the name of Mrs. Clanton and "separate from his own,"<sup>8</sup> about which he had extracted -- only days before -- a written pledge from his wife. See WHW Enterprises, Inc. v. FCC, 753 F.2d 1132, 1138-43 (D.C. Cir. 1985) (Court remands for hearing where the evidence suggested that the applicant misrepresented his ownership of assets that were owned by a relative); Joseph Bahr, 7 FCC Rcd 2147, 2149-51 (Rev. Bd. 1992)

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<sup>8</sup> Petition to Amend at 1.

(candor issue added where applicant's claim to asset was contradicted by other evidence). A substantial question also exists whether the document "dated" December 10, 1991 was in fact executed by his wife in 1991. Mr. Clanton's argument today regarding the alleged 1991 "inadvertent omission" is wholly dependent on the genuineness of the 1991 document. If such a document truly existed in 1991, then Clanton's 1991 financial certification, relying only on his funds, constituted at best a reckless disregard for the truth about his financial plan, similar to his lack of candor with respect to his service-area residence.<sup>9</sup> The Commission demands more care and forthrightness from its applicants.

9. In sum, a false certification issued should be added against Clanton because he failed to list all of his financial sources at the time of the December 1991 application and the May 1992 amendment. Moreover, issues should be enlarged against Clanton because of the apparent misrepresentations (i) in his December 1991 application and May 1992 amendment that he was the sole source of committed funds and (ii) in connection with the execution of the assurance letter from his wife. The following issues should be designated:


1. To determine whether Clanton falsely certified in his December 1991 application or his May 1992 amendment that he was financially qualified, and if so, the effect thereon on his qualifications to become a Commission licensee.

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<sup>9</sup> See Motion to Enlarge, filed by Selznick on August 23, 1993.

2. To determine whether Clanton misrepresented facts or lacked candor in certifying that he was financially qualified in his December 1991 application or May 1992 amendment, and if so, the effect thereon on his qualifications to become a Commission licensee.
3. To determine whether Clanton misrepresented facts or lacked candor in supplying a document to Selznick purporting to represent a written assurance of funding from his wife contemporaneous with his December 1991 application, and if so, the effect thereon on his qualifications to become a Commission licensee.

Respectfully submitted,



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Counsel for Loren Selznick

September 23, 1993

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Appendix A

DISCOVERY ADDENDUM

1. If the motion to enlarge is granted, Selznick will seek production of the following documents pursuant to 47 CFR

§ 1.229(e)(i):

- a. Copies of all documents concerning the Franklin U.S. Government Securities Fund owned by Peggy J. Clanton.
- b. Copies of all tax return filed by Peggy J. Clanton and/or Raymond Clanton for tax years 1990, 1991 and 1992.
- c. Copies of all documents used or relied upon by Raymond Clanton in the filing of his 1991 application in this FM proceeding.

2. Selznick requests the deposition of Peggy J. Clanton.



CERTIFICATE OF SERVICE

I, Karen D. Anderson, do certify that a copy of the foregoing "Second Motion to Enlarge Issues" was served by prepaid, First Class U.S. Mail on this 23rd day of September 1993, on the following:

\* Honorable John M. Frysiak  
Room 223  
Federal Communications Commission  
2000 L Street, NW  
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\* Paulette Laden, Esq.  
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\* By Hand